

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Deans Cablevision, Inc.)	File No.: EB-02-KC-393
Owner of Antenna Structure Registration)	
Number 1223423 at Conception Junction,)	NAL/Acct. No. 200232560010
Missouri)	
Lamoni, Iowa)	FRN 0006-1494-96

MEMORANDUM OPINION AND ORDER

Adopted: November 4, 2003

Released: November 6, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed on January 10, 2003, by Deans Cablevision, Inc. (“Deans Cablevision”). Deans Cablevision seeks reconsideration of the *Forfeiture Order*,¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of \$10,000 for willful violation of Section 17.50 of the Commission’s Rules (“Rules”).² The noted violation involves the failure to clean or repaint the antenna structure as often as necessary to maintain good visibility. For the reasons discussed below, we affirm the monetary forfeiture in the amount of \$10,000.

II. BACKGROUND

2. Deans Cablevision is the owner of an antenna structure with Antenna Structure Registration (“ASR”) number 1223423 located in Conception Junction, Missouri. On May 30, 2002, an agent from the Commission’s Kansas City, Missouri Field Office (“Kansas City Office”) inspected that antenna structure and observed that the antenna structure’s bands of paint were not clearly visible because of faded and rusted paint.

3. As a result of the agent’s investigation the District Director of the Kansas City Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) on June 26, 2002, in the amount of \$10,000.³ Deans Cablevision did not file a response to the NAL. On December 12, 2002, the Bureau issued a *Forfeiture Order* affirming the forfeiture proposed by the NAL. Deans Cablevision filed a petition for reconsideration of the *Forfeiture Order* on January 10, 2003.

4. In its petition for reconsideration, Deans Cablevision does not deny the violation but requests cancellation of the forfeiture on the basis of its inability to pay. As support, Deans Cablevision provides copies of its balance sheet as of June 30, 2002, its income statement for the six month period ending June 30, 2002 and its federal income tax returns for 1999, 2000 and 2001.

¹ 17 FCC Rcd 24800 (Enf. Bur. 2002).

² 47 C.F.R. § 17.50.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232560010 (Enf. Bur., Kansas City Office, released June 26, 2002).

III. DISCUSSION

5. Section 17.50 of the Rules provides that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. We conclude on the basis of the agent's investigation that Deans Cablevision willfully violated Section 17.50.

6. We have reviewed the financial information provided by Deans Cablevision to support its claim of inability to pay and we find that this information does not provide a basis for reduction or cancellation of the forfeiture as the forfeiture amount is a small percentage of Deans Cablevision's gross revenues.⁴ However, as explicitly stated in the *Forfeiture Order* and set forth below, Deans Cablevision may submit a request for full payment of the forfeiture under an installment plan.⁵

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended ("Act"),⁶ and Section 1.106 of the Rules,⁷ Deans Cablevision's petition for reconsideration of the December 12, 2002, *Forfeiture Order* **IS DENIED** and the issuance of the \$10,000 forfeiture **IS AFFIRMED**.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules⁸ within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁹ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232560010, and FRN 0006-1494-96. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

⁴ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, 7 FCC Rcd 6741, 6742 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

⁵ 17 FCC Rcd at 24801.

⁶ 47 U.S.C. § 405.

⁷ 47 C.F.R. § 1.106.

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.

9. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Deans Cablevision, Inc., 115 South Linden, Lamoni, Iowa 50140.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau